

The Virginia Department of Motor Vehicles would like to provide the following comments on the interim final rule established by the Transportation Security Administration (TSA) for determining whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a Commercial Driver's License. From the perspective of DMV, a major concern with the rule is that it does not provide detailed procedures regarding how the security threat assessment will be implemented by TSA.

The assessment process will require the coordination and cooperation of a number of different agencies at the federal, state, and local level, yet only general guidelines are provided in such key areas as the collection and processing of fingerprints, submission of applications and collection of fees, notification of assessments to applicants and states, record retention requirements for states, and the handling of appeals, extensions, and waivers. Since these detailed procedures are not provided, states are not yet able to begin implementation of the requirements in critical areas such as automated system programming and forms development.

In lieu of immediate implementation of the rule, DMV believes that TSA should first complete the development of detailed procedures for the implementation of the security threat assessment. Following the development of these procedures, DMV also recommends that the states be allowed a minimum of 180 additional days to effectively prepare for the implementation of the program.

In order to clarify this concern, specific questions and points in each of the program areas are provided below.

1. PROCESSING OF FINGERPRINTS

The rule does not provide procedures regarding how the fingerprinting process should be completed by the states, nor how it should be coordinated with federal, state, and local law enforcement agencies. For example, the rule does not address how the fingerprints will be submitted to TSA, or if a fingerprint form will be provided to local law enforcement agencies.

The rule states that "The process of collecting, submitting, and analyzing fingerprints is resource intensive and complex. Under this rule, TSA and the States will consult closely to determine the most cost effective means of collecting fingerprints without unduly burdening State resources....TSA will work closely with the Department of Justice (DOJ),

the States, and the industry to develop an effective, efficient fingerprinting process.” (Page 22).

DMV is supportive of this developmental approach, yet recommends that the implementation of the rule be delayed until this process has been completed and supporting procedures have been developed and provided to the states. As noted above, DMV recommends that implementation of the rule be delayed a minimum of 180 days following the development and issuance of such procedures.

2. COLLECTION OF FEES

As noted in the rule (fingerprinting cost, page 59), the fee paid by the applicant will be distributed to several different law enforcement agencies at the federal, state, and local level. However, it does not provide specific procedures regarding how the fee will be paid by the applicant nor how it will be distributed to these multiple agencies. In addition, it does not clarify if the applicant will be required to pay an additional fee if the initial fingerprints are not readable and must be processed a second time.

3. SUBMISSION OF APPLICATION FORM

Under the provisions of the rule (application form, page 79), “Each individual must complete and sign the application form. The State must forward it to TSA in a form and manner acceptable to TSA.” However, the rule does not specify what form and manner is acceptable to TSA, or if the application must be submitted in an electronic format.

4. APPEALS PROCESS

The rule allows an individual to appeal the Initial Notification of Threat Assessment (notification of threat assessment and appeal, page 45), yet does not provide specific instructions to the states on how to handle the appeals process. For example, an applicant would likely contact DMV regarding an appeal, yet the rule does not provide information regarding who in TSA the individual should contact to initiate or obtain information on the appeal.

5. RECORD RETENTION REQUIREMENTS

The security threat assessment process will result in several types of notifications being issued by TSA, including the Initial Notification of Threat Assessment and the Final Notification of Threat Assessment (notification of threat assessment and appeal, pages 87-91). However, the rule does not provide procedures regarding if and how long these notifications should be retained by the states on a customer record. Although CDLIS will play a key role in the threat assessment process, the rule also provides no detailed procedures regarding what specific data must be transmitted by the states to that system. Without procedures to govern data retention and transmittal requirements, Virginia and other states are unable to begin the automated system programming required to implement this program.

6. NOTIFICATION TO CDL HOLDER

Under the provisions of the rule, "Each state must notify individuals holding a hazardous materials endorsement that he or she will be subject to a security threat assessment, at least 180 days before the endorsement expires. The notice must also inform these individuals that they may initiate the security threat assessment required by this rule any time after receiving the notice, but no later than 90 days before the expiration of the notice." (summary of the interim final rule, page 26).

These time frames may have significant negative impact on Virginia and other states. For example, a CDL holder may renew the hazardous materials endorsement early, causing the expiration dates for the endorsement and the CDL to be different. This would require extensive programming changes to the automated system and also create significant logistical problems for both the states and the license holders. While detailed procedures also need to be developed in this area, Virginia recommends that a maximum period for early renewal be established.

In addition, as noted with the appeals process (No. 4 above), the rule does not provide information regarding who in TSA the individual should contact regarding the status of the background check during the 90 day period.

7. INITIAL NAME BASED CHECK

For the first 180 days following the publication of the rule, TSA has indicated that it will conduct a name based background check on current CDL holders by using data contained in CDLIS. If the check determines that the individual does not meet the security threat

assessment standards, TSA will notify the individual and the State in which he or she holds or is applying for a hazardous materials endorsement. If the individual does not contest the initial result or is unable to correct the record, TSA will notify the State to revoke or deny the endorsement. Virginia currently does not have the authority to cancel the CDL based on this check.

8. REVOKE HAZARDOUS MATERIALS ENDORSEMENT

The rule specifies that within 15 days of receipt of a Final Notification of Threat Assessment the State must “Revoke or deny the individual’s hazardous materials endorsement, if TSA serves the State with a Final Notification of Threat Assessment.” (state notification requirements, page 81). However, the rule does not state if the revocation must be effective immediately or if the individual can be given a specified date in the future. Virginia recommends that the order become effective 30 days after the order is issued by the State.

In addition, for the renewal of a CDL, it is not clear if a state would be required to cancel the endorsement or be allowed to wait and not renew the endorsement at the time of expiration. Virginia recommends that the endorsement not be renewed at the time of expiration.

9. TRANSMISSION OF ELIGIBILITY/INELIGIBILITY DATA

The rule does not indicate the mechanism for transmission of eligibility/ineligibility data from TSA to the states. We strongly encourage sending this information via CDLIS. Utilization of this well established system, with modification, will facilitate the states' implementation. Requiring the development of a new program/system will cause an unnecessary burden on implementation staff.

Virginia is appreciative of the opportunity to make comment on the interim final rule. We hope our recommendation that TSA develop detailed procedures and delay implementation a minimum of 180 additional days following the development of such procedures, will be strongly considered by the agency.